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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/662,073

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9799

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EXAMINER

REICHLE, KARIN M

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

03/09/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: RICHARD NORRIS DODGE II, LI YOUNG,
SRIDHAR RANGANATHAN, WENDY LYNN VAN DYKE,
XIAOMIN X. ZHANG, GERD JONAS, AND KLAUS PFLUEGER

Application No. 10/662,073
Technology Center 3700

Mailed: March 6, 2009

Before KRISTA ZELE *Deputy Chief Appeals Administrator*
ZELE, *Deputy Chief Appeals Administrator.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on December 30, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

EXAMINER'S ANSWER

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

A review of the file finds that the grounds of rejection to be reviewed on appeal of the claims as provided in the Examiner's Answer mailed September 24, 2008 under the heading "Grounds of rejection to be Reviewed on Appeal" is either unclear or is not consistent with the grounds of rejection of claims set forth in the last Office action of record. The grounds of rejection to be reviewed on appeal as provided in the Examiner's Answer must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. Furthermore, the examiner must provide a clear statement of whether examiner agrees or disagrees with the statement of grounds of rejection to be reviewed as set forth in the brief and an explanation of any disagreement. *See also Manual of Patent Examining Procedure* (MPEP) § 1207.02 (8th ed. Rev. 6, Sept 2007) for details.

A review of the Examiner's Answer finds that the Examiner's Answer does not clearly address differences between rejections set forth in the Examiner's Answer and those addressed in the brief.

More specifically, the Examiner must either list all grounds of rejection listed in the last office action or withdraw the rejections not listed. It is incorrect to state that a rejections are "not under review because they on appeal because they have not been presented for review in the appeal brief."

Clarification of the record is required for all Grounds of rejection to be reviewed on appeal for all claims.

EXAMINER'S ANSWER, GROUNDS OF REJECTION

A review of the file finds that the grounds of rejection of the claims as provided in the Examiner's Answer mailed September 24, 2008 under the heading "Grounds of rejection" is not consistent with the grounds of rejection of claims set forth in the last Office action of record. The grounds of rejection of the claims as provided in the Examiner's Answer must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. Each Grounds of rejection to be reviewed on appeal must be identified and any new grounds of rejection must be provided under a separate heading "New Grounds of Rejection" in the Examiner's Answer and must include the approval of the TC Director or his/her designee. *See also Manual of Patent Examining Procedure* (MPEP) § 1207.02 and 1207.03 (8th ed. Rev. 6, Sept 2007) for details.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) to vacate the Examiner's Answer mailed September 24, 2008;
- 2) to generate a new Examiner's Answer setting forth the correct

Grounds of rejection to be reviewed on appeal and to correct other sections of the Answer as may be required; and

- 3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

Application No. 10/662,073

KZ/MTV/ak

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